

9-20-01

BEFORE THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA,

AP

Petitioner,

DOAH Case No. 01-0020

vs.

REM-Closed

JAMES M. McMILLAN,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE coming on to be heard before THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (hereafter referred to as "THE SCHOOL BOARD") at its meeting conducted on December 18, 2001, to consider (1) the Recommended Order filed on September 20, 2001 by Robert E. Meale, Administrative Law Judge of the State of Florida - Division of Administrative Hearings, consisting of Findings of Fact, Conclusions of Law, and a Recommendation that a final order be entered dismissing the Administrative Complaint; (2) Petitioner SCHOOL BOARD's Exceptions to the Recommended Order; and (3) Respondent McMILLAN's Response in Opposition to Petitioner's Exceptions. THE SCHOOL BOARD having heard oral argument presented by counsel on behalf of all parties, having considered the record, and being fully advised in the Premises:

IT IS THEREUPON Ordered and Adjudged as Follows:

1. Petitioner's Exception 1 concerns Paragraph 42 of the Recommended Order. While Paragraph 42 is placed under the subheading "Findings of Fact" within the Recommended Order, THE SCHOOL BOARD finds that the text of Paragraph 42 in actuality consists of conclusions of law over which it has substantive jurisdiction. THE SCHOOL BOARD rejects the

conclusions of law contained in Paragraph 42 as they are not supported by competent substantial evidence and are contrary to established findings of fact. The findings of fact contained within Paragraphs 1, 2, 8, 14, 15, 21, 25, 28 and 40 of the Recommended Order support a conclusion of law that the Respondent acted incompetently, inefficiently and immorally. THE SCHOOL BOARD adopts the following substituted conclusions of law in place of those contained in Paragraph 42 of the Recommended Order and finds that its substituted conclusions of law are as or more reasonable than those which were rejected:

42. Respondent was on notice that hazing had occurred or, at a minimum, that there was a problem with a student that warranted looking into. The competent substantial evidence in this case establishes that Respondent had notice, and thus had a duty to investigate any wrongdoing and a duty to maintain the safety of students under his supervision. Respondent's lack of action or concern rattles standards of public conscience and good morals. Given the aforementioned, it has been established that the Respondent did act incompetently and immorally sufficient to warrant a ten day suspension without pay.

2. Petitioner's Exception 2 concerns Paragraph 44 of the Recommended Order. While Paragraph 44 was placed under the subheading "Findings of Fact" within the Recommended Order, THE SCHOOL BOARD finds that the text of Paragraph 44 in actuality consists of conclusions of law over which it has substantive jurisdiction. THE SCHOOL BOARD rejects the conclusions of law contained in paragraph 44 as they are not supported by competent substantial evidence and are contrary to established findings of fact. The findings of fact contained within Paragraphs 7, 8, 10, 11 and 12 of the Recommended Order support a conclusion of law that the Respondent committed misconduct in office. THE SCHOOL BOARD adopts the following substituted conclusions of law in place of those contained in Paragraph 44 of the Recommended Order and finds that its substituted conclusions of law are as or more reasonable than those which were rejected:

44. Respondent committed misconduct in office through his failure to adequately supervise and to fulfill his duties and obligations as an instructor. Respondent's supervision can in no way be described as adequate when seven students were hazed while under Respondent's watch. By any standard, supervision which permits this gross conduct to occur is not only inadequate but demonstrative of misconduct in office.

3. Petitioner's Exceptions 3 and 4 were withdrawn *ore tenus* by the Petitioner SCHOOL BOARD at the onset of the hearing upon the Recommended Order and Exceptions.

4. Petitioner's Exception 5 concerns Paragraph 55 of the Recommended Order. THE SCHOOL BOARD finds that the text of Paragraph 55 consists of conclusions of law over which it has substantive jurisdiction. THE SCHOOL BOARD rejects the conclusions of law contained in Paragraph 55 for the same reasons it rejected Paragraphs 42 and 44 of the Recommended Order. THE SCHOOL BOARD adopts the following substituted conclusions of law in place of those contained in Paragraph 55 of the Recommended Order and finds that its substituted conclusions of law are as or more reasonable than those which were rejected:

55. The record conclusively establishes that Respondent's actions, as well as his lack thereof, evidence his incompetency, immorality and misconduct in office. Respondent had notice, knew or should have known hazing had occurred and failed to respond in any capacity to investigate those guilty of wrongdoing and help those injured.

5. Except as rejected or modified herein, the Findings of Fact and Conclusions of Law contained within the Recommended Order are adopted by THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA.

6. The Recommendation contained in the Recommended Order is rejected by THE SCHOOL BOARD as a review of the record as established by the Findings of Fact contained at Paragraphs 1, 2, 7, 8, 10, 11, 12, 14, 15, 21, 25, 28 and 40 of the Recommended Order establish

incompetency, immorality and misconduct in office on the part of the Respondent. THE SCHOOL BOARD adopts the following as the disposition of this matter:

The Respondent is suspended without pay for a period of ten (10) days.

DONE AND ORDERED in Fort Lauderdale, Broward County, Florida this 8 day of January, 2001.

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By 
DR. ROBERT D. PARKS, Chairperson

Copies Furnished:

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APPEAL OF FINAL ORDER

THIS FINAL ORDER may be appealed by filing notices of appeal and a filing fee, as set out in Section 120.68(2), Florida Statutes, and Rules 9.110(b) and (c), Florida Rules of Civil Procedure, within thirty (30) days of the entry of this Final Order.

Filed in Official School Board Records the
8 day of January, 2002.

Ellen Ruth McKnight
Supervisor, Official School Board Records

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